

# HOUSE BILL No. 1139

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-17.

**Synopsis:** Paid sick and safe leave. Provides that certain employers shall provide paid sick and safe leave to employees, accrued at the rate of one hour of paid sick and safe leave for every 30 hours of employment. Establishes conditions to entitlement to sick and safe leave. Provides that the commissioner of labor shall enforce paid sick and safe leave for employees.

**Effective:** January 1, 2017.

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January 7, 2016, read first time and referred to Committee on Employment, Labor and Pensions.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1139

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-2-17 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2017]:

4 **Chapter 17. Employee Sick and Safe Leave**

5 **Sec. 1. Nothing in this chapter is intended to:**

6 (1) preempt, limit, or otherwise affect any worker's  
7 compensation benefits under IC 22-3-3 through IC 22-3-6 or  
8 worker's occupational disease compensation under IC 22-3-7;  
9 or

10 (2) preempt, limit, or otherwise affect any other law that  
11 provides for employment leave benefits that are more  
12 generous than provided under this chapter.

13 **Sec. 2. This chapter may not be construed to:**

14 (1) affect a provision of a contract, collective bargaining  
15 agreement, an employee benefit plan, or any other agreement  
16 that requires the employer to provide general paid leave  
17 benefits that meet the minimum requirements of this chapter;



(2) prohibit an employer from establishing a policy under which employees may voluntarily exchange assigned work hours; or

(3) prohibit an employer from adopting or retaining a general paid leave policy that meets the minimum requirements of this chapter.

Sec. 3. As used in this chapter, "commissioner" refers to the commissioner of labor appointed under IC 22-1-1-2.

Sec. 4. As used in this chapter, "department" refers to the department of labor created by IC 22-1-1-1.

Sec. 5. As used in this chapter, "domestic or family violence" has the meaning set forth in IC 34-6-2-34.5.

Sec. 6. As used in this chapter, "employee" does not include an individual who:

(1) does not have a regular work schedule with the employer;

(2) contacts the employer for work assignments and is scheduled to work the assignments within forty-eight (48) hours of contacting the employee;

(3) has no obligation to work for the employer if the individual does not contact the employer for work assignments;

(4) is employed by a temporary placement agency; or

(5) regularly works less than eight (8) hours a week for an employer.

Sec. 7. As used in this chapter, "employer" includes every person, firm, partnership, association, corporation, limited liability company, and receiver, and any agent or officer of any of the above, employing any person in the state, including the state, quasi-public corporations or bodies, and municipal corporations (as defined in IC 36-1-2-10), but excludes:

(1) the federal government, including the United States military service; and

(2) railroads.

Sec. 8. As used in this chapter, "family member" means:

(1) a biological child, an adopted child, a foster child, or a stepchild of the employee;

(2) a child for whom the employee has legal or physical custody or guardianship;

(3) a child for whom the employee is the primary caregiver;

(4) a spouse of the employee;

(5) a biological parent, an adoptive parent, a foster parent, or a stepparent of the employee or of the employee's spouse;



- (6) the legal guardian of the employee;
- (7) an individual who served as the primary caregiver of the employee when the employee was a minor;
- (8) a grandparent or the spouse of a grandparent of the employee;
- (9) a grandchild of the employee;
- (10) a biological sibling, an adopted sibling, or a foster sibling of the employee; or
- (11) the spouse of a biological sibling, a foster sibling, or an adopted sibling of the employee.

Sec. 9. As used in this chapter, "health care provider" has the meaning set forth in IC 16-18-2-163(c).

Sec. 10. As used in this chapter, "health care service" has the meaning set forth in IC 11-10-3-6(b)(2).

Sec. 11. As used in this chapter, "leave" means earned sick and safe leave away from employment that is provided by an employer under section 14(a) of this chapter.

Sec. 12. As used in this chapter, "victim service provider" has the meaning set forth in IC 35-37-6-5.

Sec. 13. As used in this chapter, "year" means:

- (1) a calendar year, if the employer uses a calendar year for regular business; or
- (2) a fiscal year, if the employer uses a fiscal year to conduct business.

Sec. 14. (a) An employer that employs more than nine (9) employees shall provide an employee with earned sick and safe leave that is paid at the same rate and with the same benefits as the employee regularly earns. An employer that employs nine (9) or fewer employees shall provide an employee with unpaid earned sick and safe leave.

(b) For purposes of determining whether an employer is required to provide paid or unpaid leave under subsection (a), the number of employees of an employer shall be determined by calculating the average monthly number of employees employed by the employer during the immediately preceding calendar year. Each employee of an employer shall be included in the calculation without regard to whether the employee would be eligible for earned leave benefits under subsection (a).

(c) The leave required to be provided under subsection (a) shall accrue at a rate of at least one (1) hour for every thirty (30) hours that an employee works.

(d) For purposes of calculating the accrual of earned leave, an



employee who is exempt from the overtime wage requirements under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.) is assumed to work forty (40) hours each work week. However, if an employee's normal work week is less than forty (40) hours, the number of hours in the normal work week shall be used for purposes of calculating leave benefits under subsection (c).

(e) At the beginning of a year, an employer may award to an employee the full amount of leave that the employee would earn over the course of the year rather than awarding the leave as the leave accrues during the year.

**Sec. 15.** An employer is not required to allow an employee to:

- (1) earn more than fifty-six (56) hours of leave in a year;
- (2) use more than eighty (80) hours of leave in a year; or
- (3) use leave during the first three (3) months that the employee is employed.

**Sec. 16. (a)** An employer may allow an employee to use leave before the employee accrues the amount to be used.

(b) If an employee is allowed to use leave under subsection (a) before the leave has accrued, the employer may deduct the amount paid to the employee for the leave taken from the wages paid on the termination of the employment if:

- (1) the employer and employee mutually consented to the deduction as evidenced by a document signed by the employee; and
- (2) the employee leaves the employment of the employer before the employee has accrued the amount of leave that was used.

**Sec. 17. (a)** Accrued leave provided under this chapter may be carried over from one (1) year and used in the following year. However, this chapter does not require an employer to be required to allow an employee to carry over in excess of fifty-six (56) hours of leave into the subsequent year in which the leave was earned.

(b) If an employee begins working in a separate division or location of the employer but remains employed by the same employer, the employee is entitled to the leave that accrued before the employee moved to the separate division or location.

**Sec. 18. (a)** This chapter does not require an employer to compensate an employee for unused leave when the employee leaves the employment of the employer.

(b) If an employee is rehired by the employer within twelve (12) months after terminating employment with the employer, the



1 employer shall reinstate any unused leave that the employee had  
2 accrued when the employee left the employment of the employer.

3 (c) If an employee is rehired by the employer more than twelve  
4 (12) months after terminating the employment of the employer, the  
5 employer is not required to reinstate any unused leave that the  
6 employee had accrued when the employee left the employment of  
7 the employer.

8 Sec. 19. Earned leave provided under section 14(a) of this  
9 chapter may be used for the following purposes:

10 (1) To care for or treat the employee's mental or physical  
11 illness, injury, or condition.

12 (2) To obtain preventative health care services for the  
13 employee or a family member of the employee.

14 (3) To care for a family member with a mental or physical  
15 illness, injury, or condition by the employee.

16 (4) To allow for the care of a family member when a school or  
17 child care center attended by a family member is closed by  
18 order of a public official due to a public health emergency.

19 (5) To address the closing of the employer's business by order  
20 of a public official due to a public health emergency.

21 (6) To care for a family member if a health official or health  
22 care provider has determined that the family member's  
23 presence in the community would jeopardize the health of  
24 others because of the family member's exposure to a  
25 communicable disease.

26 (7) To address the effects of domestic or family violence  
27 against the employee or a family member when the earned  
28 sick and safe leave is being used:

29 (A) by the employee to obtain for the employee or a family  
30 member of the employee:

31 (i) medical attention that is needed to recover from  
32 physical or psychological injury or disability that is  
33 caused by the domestic or family violence;

34 (ii) services from a victim service provider related to the  
35 domestic or family violence;

36 (iii) psychological or other counseling related to the  
37 domestic or family violence; or

38 (iv) legal services, including preparing for or  
39 participating in a civil or criminal proceeding related to  
40 or resulting from the domestic or family violence; or

41 (B) during the time that the employee has temporarily  
42 relocated due to the domestic or family violence.



1       **Sec. 20. (a) In order to use leave, an employee shall:**

2           **(1) request the leave from the employer as soon as practicable**  
 3           **after the employee determines that the employee needs to take**  
 4           **the leave;**

5           **(2) notify the employer of the anticipated duration of the**  
 6           **leave; and**

7           **(3) comply with any reasonable procedures established by the**  
 8           **employer under section 22 of this chapter.**

9       **(b) In lieu of taking leave, with mutual consent of the employer**  
 10       **and employee, an employee may work additional hours or trade**  
 11       **shifts with another employee during a pay period to make up time**  
 12       **from work from which the employee was absent for which the**  
 13       **employee could have taken leave.**

14       **(c) An employee is not required to offer or to accept an offer of**  
 15       **additional work hours or a trade in shifts in lieu of taking leave.**

16       **(d) An employee may take leave in the smallest increment that**  
 17       **the payroll system of the employer uses to account for absences or**  
 18       **use of the employee's time at work.**

19       **(e) An employee may not be required to take leave in an**  
 20       **increment of more than one (1) hour.**

21       **Sec. 21. When wages are paid to an employee, the employer**  
 22       **shall provide in writing by any reasonable method a statement**  
 23       **regarding the amount of leave that is available for use by the**  
 24       **employee.**

25       **Sec. 22. (a) Except as provided in subsections (b) and (c), an**  
 26       **employer may establish reasonable procedures for an employee to**  
 27       **follow when requesting and taking leave.**

28       **(b) An employer may not require that an employee who is**  
 29       **requesting leave search for or find an individual to work in the**  
 30       **employee's place during the time that the employee is taking the**  
 31       **leave.**

32       **(c) An employer may not require an employee to:**

33           **(1) disclose the details of the:**

34           **(A) domestic or family violence that was committed against**  
 35           **the employee or the employee's family member; or**

36           **(B) mental or physical illness, injury, or condition of the**  
 37           **employee or the employee's family member; or**

38           **(2) provide, as certification, any information that would**  
 39           **violate the Social Security Act (42 U.S.C. 301 et seq.) or the**  
 40           **federal Health Insurance Portability and Accountability Act**  
 41           **(42 U.S.C. 201 et seq.).**

42       **Sec. 23. (a) Subject to section 22(c) of this chapter, an employer**



1 may require an employee who uses leave for more than two (2)  
 2 consecutive shifts to provide reasonable documentation to verify  
 3 that the leave was used appropriately under section 19 of this  
 4 chapter.

5 (b) Reasonable documentation that may be required by the  
 6 employer under subsection (a) includes:

- 7 (1) for leave used under section 19(4) and 19(5) of this  
 8 chapter, the notice of the closure order by a public official in  
 9 the form in which the employee received the notice of closure;  
 10 (2) for leave used under section 19(1), 19(2), 19(3), or 19(6) of  
 11 this chapter, documentation from the health officer or health  
 12 care provider that the use of leave is necessary; and  
 13 (3) for leave used under section 19(7) of this chapter:

14 (A) a report by a law enforcement officer indicating that  
 15 the employee or a family member of the employee was a  
 16 victim of domestic or family violence;

17 (B) documentation that an indictment or information has  
 18 been filed alleging the commission of domestic or family  
 19 violence against the employee or a family member of the  
 20 employee;

21 (C) certification from an office of a prosecuting attorney,  
 22 the department of child services, a representative of law  
 23 enforcement, an attorney representing the victim, or an  
 24 advocate for the victim that the employee or a family  
 25 member of the employee is a party or witness in a legal  
 26 action related to the family or domestic violence committed  
 27 against the employee or a family member of the employee;

28 (D) an order from a court protecting the employee or a  
 29 family member of the employee from the perpetrator of  
 30 the domestic and family violence committed against the  
 31 employee or the family member of the employee; or

32 (E) a notice from a court, the attorney representing the  
 33 victim, or an office of a prosecuting attorney that the  
 34 employee or a family member of the employee appeared or  
 35 is scheduled to appear in court in connection with the  
 36 family or domestic violence committed against the  
 37 employee or a family member of the employee.

38 Sec. 24. An employer may not require that:

- 39 (1) the documentation used for verifying the use of leave  
 40 under section 19(1) through 19(6) of this chapter explain the  
 41 nature of the mental or physical illness, injury, or condition;  
 42 or





(2) the documentation used for verifying the use of the earned leave under section 19(7) of this chapter includes details regarding the family or domestic violence.

**Sec. 25. (a) If documentation required under section 23 of this chapter:**

- (1) relates to the mental or physical health of an employee; or
- (2) is documentation relating to family or domestic violence committed against an employee or a family member of the employee;

the employer shall maintain the documentation in a confidential file that is separate from the personnel file of the employee.

**(b) An employer may not disclose the documentation maintained under subsection (a) unless the disclosure is made:**

- (1) to the employee;
- (2) with the permission of the employee; or
- (3) to the commissioner or to a court in connection with a proceeding.

**Sec. 26. (a) As used in this section, "adverse action" includes:**

- (1) discharge;
- (2) demotion;
- (3) threatening the employee with discharge or demotion; or
- (4) any other retaliatory action that results in a change of the terms or conditions of employment that would discourage a reasonable employee from exercising a right under this chapter.

**(b) An employer may not:**

- (1) take adverse action or discriminate against an employee because the employee exercises in good faith the rights of an employee protected under this chapter; or
- (2) count leave taken by the employee in accordance with this chapter as an absence that may lead to or result in any adverse action taken against the employee.

**(c) There is a rebuttable presumption that an employer has violated this section if the employer takes adverse action against the employee within ninety (90) days after the employee:**

- (1) files a complaint with the commissioner alleging a violation of this chapter or brings a civil action in accordance with section 30(b) of this chapter;
- (2) informs a person about an alleged violation of this chapter by the employer;
- (3) cooperates with the commissioner, the department, or another person in the investigation or prosecution of an



1 alleged violation of this chapter by the employer; or  
 2 (4) opposes a policy or practice of the employer or an act  
 3 committed by the employer that is unlawful under this  
 4 chapter.

5 (d) The protections afforded under this section apply to an  
 6 employee who mistakenly, but in good faith, alleges a violation of  
 7 this chapter.

8 Sec. 27. (a) An employer shall notify the employees of the  
 9 employer that the employees are entitled to leave under this  
 10 chapter by notice.

11 (b) The notice required under subsection (a) shall include:

12 (1) a statement of how leave is accrued under section 14 of this  
 13 chapter;

14 (2) the purposes for which the employer is required to allow  
 15 an employee to use leave under section 19 of this chapter;

16 (3) a statement regarding the prohibition set forth in section  
 17 26 of this chapter against the employer taking adverse action  
 18 against an employee that exercises a right under this chapter;  
 19 and

20 (4) information regarding the right of an employee to report  
 21 an alleged violation of this chapter to the commissioner or the  
 22 department.

23 (c) The commissioner shall create and make available a poster  
 24 and a model notice that may be used by an employer to comply  
 25 with subsection (a).

26 (d) The model notice created under subsection (c) shall be  
 27 printed in English, Spanish, and any other language that the  
 28 commissioner determines is necessary to notify employees of the  
 29 rights of employees under this chapter.

30 (e) An employer may comply with subsection (a) by:

31 (1) displaying the poster created under subsection (c) in a  
 32 conspicuous and accessible area at the location in which the  
 33 employees work;

34 (2) including the notice created under subsection (c) or a  
 35 notice in conformance with subsection (f) in an employee  
 36 handbook or other written guidance to employees concerning  
 37 employee benefits or leave provided by the employer; or

38 (3) distributing the notice created under subsection (c) or a  
 39 notice in conformance with subsection (f) to each employee  
 40 when the employee is hired.

41 The notice may be distributed electronically by the employer to the  
 42 employees of the employer.



1 (f) If an employer decides not to use the model notice created  
 2 under subsection (c), the notice provided by the employer must  
 3 contain the same information that is included in the model notice.

4 (g) The department may impose a civil penalty of not more  
 5 than:

6 (1) one hundred twenty-five dollars (\$125) for the first  
 7 violation; and

8 (2) two hundred fifty dollars (\$250) for the second violation;  
 9 against an employer that violates this section.

10 Sec. 28. (a) Notwithstanding IC 22-1-1-15(b), an employer shall  
 11 keep for not less than three (3) years records of:

12 (1) leave accrued by each employee; and

13 (2) leave used by each employee.

14 An employer may keep the records in the same manner that the  
 15 employer keeps other records required to be kept under any other  
 16 law.

17 (b) After giving notice to the employer and determining a  
 18 mutually agreeable time for the inspection, the commissioner or an  
 19 agent of the department may inspect a record kept under  
 20 subsection (a) for the purpose of determining whether the  
 21 employer has complied with the provisions of this chapter, under  
 22 the authority granted by IC 22-1-1-16.

23 (c) There is a rebuttable presumption that an employer has  
 24 violated the provisions of this chapter if:

25 (1) there is an allegation that the employer has failed to  
 26 accrue accurately the amount of leave available to an  
 27 employee; and

28 (2) the employer fails to:

29 (A) keep records as required under subsection (a); or

30 (B) allow the commissioner or the department to inspect  
 31 records kept under subsection (a).

32 The rebuttable presumption may be overcome only by clear and  
 33 convincing evidence.

34 Sec. 29. (a) An employee, in bad faith, may not:

35 (1) file a complaint with the commissioner or the department  
 36 alleging a violation of this chapter;

37 (2) bring an action under section 30(b) of this chapter; or

38 (3) testify in an action under section 30 of this chapter.

39 (b) An employee who violates this section commits a Class B  
 40 infraction.

41 Sec. 30. (a) Whenever the commissioner determines that this  
 42 chapter has been violated, the commissioner may:



1 (1) try to resolve by informal mediation under IC 22-1-1-8(4)  
2 any issue involved in the violation;

3 (2) ask the attorney general to bring an action under  
4 IC 22-1-1-18 on behalf of the employee, with the written  
5 consent of the employee; or

6 (3) bring an action on behalf of an employee in the circuit or  
7 superior court in the county in which the violation allegedly  
8 occurred.

9 (b) An employee may bring a civil action in the circuit or  
10 superior court in the county where the violation allegedly occurred  
11 against the employer for an alleged violation of this chapter. A  
12 action may be brought under this subsection whether or not the  
13 employee first filed a complaint with the commissioner or the  
14 department.

15 (c) An action brought under subsection (a) or (b) must be filed  
16 not more than two (2) years after the alleged occurrence of the act  
17 on which the action is based, in accordance with IC 34-11-2-2.

18 (d) If, in an action under subsection (a) or (b), the court finds  
19 that an employer has violated this chapter, the court may award  
20 the employee:

21 (1) the full monetary value of any unpaid leave;

22 (2) actual economic damages suffered by the employee as the  
23 result of the employer's violation of this chapter;

24 (3) an additional amount not exceeding three (3) times the  
25 damages awarded under subdivision (2);

26 (4) reasonable attorney's fees and other costs; and

27 (5) any other relief that the court considers appropriate,  
28 including;

29 (A) reinstatement to employment;

30 (B) back pay; and

31 (C) injunctive relief.

32 (e) If benefits to an employee are recovered under this section,  
33 the benefits shall be paid or otherwise distributed to the employee  
34 without cost to the employee.

35 (f) If the action under subsection (a)(2) was brought by the  
36 attorney general, the court may award a civil penalty of one  
37 thousand dollars (\$1,000) per violation to the state.

38 Sec. 31. (a) Leave provided under this chapter shall accrue after  
39 December 31, 2016. An employee may not accrue leave under this  
40 chapter based on employment worked prior to January 1, 2017.

41 (b) This section expires December 31, 2019.

